

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

Aaron Joseph Brott,  
Plaintiff,

vs.

Joshua Racki, et al.,  
Defendants.

**CV 20-126-GF-BMM**

**ORDER ADOPTING THE  
MAGISTRATE’S FINDINGS AND  
RECOMMENDATION (DOC. 2)**

Petitioner Brott filed this action under 28 U.S.C. § 2241 on December 29, 2020. Doc. 1. Brott is representing himself and remains in pretrial detention. He asks the Court to order that he be released or, in the alternative, to restore his phone privileges, allow him to communicate with his family and friends, and transfer him to general population. United States Magistrate Judge John Johnston issued a Findings and Recommendation on January 4, 2021. Doc. 2. Petitioner Brott filed objections to Magistrate Johnston’s order on January 12, 2021. Doc. 3.

**FINDINGS AND RECOMMENDATION**

Magistrate Johnston recommends that the Court dismiss Petitioner Brott’s petition. Doc. 2 at 3. Magistrate Johnston cites that Petitioner Brott failed to pay the filing fee and failed to move to proceed in forma pauperis. *Id.* Magistrate

Johnston determined that Petitioner Brott needs to exhaust his claims in state court before he can proceed in federal court. *Id.* (citing *Brown v. Ahern*, 676 F.3d 899, 903 (9th Cir. 2012)). Magistrate Johnston also determined *arguendo* that Petitioner Brott's case is likely barred by *Younger v. Harris*, 410 U.S. 37, 43 (1971). Magistrate Johnston recommended that the Court should deny the certificate of appealability. Magistrate Johnston recommended that the Court direct the clerk to close this matter. *Id.*

## LEGAL STANDARD

The Court conducts de novo review of the portions of a magistrate judge's findings and recommendations to which a party properly objects. 28 U.S.C. § 636(b)(1). A party makes a proper objection by "identifying the parts of the magistrate's disposition that the party finds objectionable and presenting legal argument and supporting authority, such that the Court is able to identify the issues and the reasons supporting a contrary result." *Montana Shooting Sports Ass'n v. Holder*, 2010 WL 4102940, at \*2 (D. Mont. Oct. 18, 2010). The Court will review for clear error the portions of a magistrate judge's findings and recommendations to which a party's objections constitute only perfunctory responses argued in an attempt to rehash the same arguments set forth in the original response. *Rosling v. Kirkegard*, 2014 WL 693315, at \*3 (D. Mont. Feb. 21, 2014). Clear error exists if

the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syraz*, 235 F.3d 422, 427 (9th Cir. 2000).

### **PETITIONER BROTT’S OBJECTIONS**

Petitioner Brott objected to Magistrate Johnston’s Findings and Recommendation. Doc. 3. The objections constitute only a perfunctory response to Magistrate Johnston’s Findings and Recommendation. See *Rosling*, 2014 WL 693315, at \*3. The Court will review the Magistrate Johnston’s Findings and Recommendation for clear error. *Syraz*, 235 F.3d at 427.

Magistrate Johnston’s Findings and Recommendation does not prove clearly erroneous. Magistrate Johnston correctly noted that Petitioner Brott failed to pay the filing fee or move to proceed *in forma pauperis*. Doc. 2 at 1. Petitioner Brott has not exhausted his remedies in state court. *Id.* Most importantly, *Younger v. Harris*, 410 U.S. 37, 43 (1971) likely bars Petitioner Brott claims.

### **IT IS HEREBY ORDERED:**

1. Magistrate Johnston’s Findings and Recommendation (Doc. 2) is **ADOPTED** in full.
2. Petitioner Brott’s petition (Doc. 1) is **DISMISSED**.
3. A certificate of appealability is **DENIED**.

4. The Clerk of the Court shall enter a judgment and close this matter.

Dated the 5th day of February, 2021.

A handwritten signature in blue ink that reads "Brian Morris". The signature is written in a cursive style with a large, stylized "B" and "M".

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Brian Morris, Chief District Judge  
United States District Court